THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0048, In re Estate of Normand A. Beaudet, the court on December 10, 2004, issued the following order:

Doris T. Langlois and Wilfred E. Beaudet appeal a decision of the trial court finding the 2001 will executed by Norman A. Beaudet to be valid. They contend that the trial court erred in: (1) assessing medical evidence; (2) relying upon the testimony of witnesses who had a limited acquaintance with the deceased; (3) shifting the burden of proof to the contestants of the will; (4) concluding that the deceased was not subject to undue influence; and (5) failing to find the will invalid due to the close relationship between the law firm which `drafted the will and the sole beneficiary. We affirm.

"We will uphold the findings and rulings of the probate court unless unsupported by the evidence or clearly erroneous as a matter of law." In re Estate of Washburn, 141 N.H. 658, 659 (1997). "We accord considerable weight to the trial court's judgments on the credibility of witnesses and the weight to be given testimony." Id.

In her brief, appellant Langlois argues that the medical testimony indicated that Norman Beaudet's mental capacity could have been affected by his medical condition and medications when he executed his will in 2001. Even if we assume without deciding that such speculative testimony was sufficient to rebut the presumption of capacity, we find no error in the probate court's ruling. See id. at 660 (once presumption of competency rebutted capacity must be proven by preponderance of evidence). In its order, the court cited the testimony of both the hospital social worker and one of the testator's treating physicians that he conversed with them normally and displayed nothing in his speech and actions that indicated a need for further psychiatric evaluation; his treating physician testified that the tumor suffered by the testator was unlikely to interfere with his cognitive skills. That the testator may have discussed leaving his estate to others does not alter our conclusion that the record supports the probate court's finding that the 2001 will was valid.

We are similarly unpersuaded that the probate court erred by basing its ruling "almost exclusively on legal conclusions drawn by attesting witnesses." In a lengthy well-reasoned order, the court cited extensive evidence to support its conclusion, including testimony by family members. Cf. RSA 551:2-a (Supp. 2004) (requirements for self-proved wills).

Nor are we persuaded that the probate court shifted the burden to the contestants of the will. In weighing the evidence, the court cited the lack of

evidence presented to support allegations that the testator was confused at the time he executed his will.

The probate court's order contains a lengthy discussion of the analysis applicable to a determination of whether a will is the product of undue influence. See Albee v. Osgood, 79 N.H. 89, 92 (1918). The record reveals that the probate court correctly applied the analysis and that the evidence supports its analysis. The record contains evidence of a long-term personal relationship between the testator and the beneficiary of his estate, including the testator's weekly visits to the beneficiary's home and that the testator spent the final months of his life in the beneficiary's home. See Washburn, 141 N.H. at 659.

Finally, we find no error in the probate court's failure to remove estate counsel or to find the will invalid because the firm was too closely identified with the sole beneficiary. We will assume without deciding that this argument has been adequately developed for appellate review. The probate court found that the law firm for the estate had represented the estate's beneficiary five years earlier in a divorce and civil matter but found no evidence that its prior representation materially limited its representation of the estate or that its prior representation was directly adverse to the decedent. See N.H. Prof. Conduct R. 1.7. We find no error in its ruling.

Affirmed.

BRODERICK, C.J., and DUGGAN and GALWAY, JJ., concurred.

Eileen Fox,
Clerk

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In Case No. 2004-0048, In re Estate of Normand A. Beaudet, the court on December 10, 2004, issued the following order:

Distribution continued:

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